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DW 08-02

Paper No. 5

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AUG 3 0 2002

OFFICE OF PETITIONS

In re Application of :
Monson et al. :
Application No. 10/055,752 : DECISION DISMISSING
Filed: 23 January, 2002 : PETITION
Attorney Docket No. 5591 EA-00059 :

This is a decision in reference to the paper styled "Petition Regarding Notice of Omitted Item" filed on 23 July, 2002, which is treated as a petition requesting that the above identified application be accorded a filing date of 23 January, 2002, with four (4) sheets of drawings as a part of the original disclosure.

The petition is dismissed.

The application was filed on 23 January, 2002. On 18 June, 2002, however, Initial Patent Examination Division mailed a Notice of Incomplete Nonprovisional Application, stating that the application had been deposited without drawings. A two (2)-month period for reply was set. In response, on 23 July, 2002 (certificate of mailing date 18 July, 2002), petitioners filed four (4) sheets of drawings, and the present petition.

Petitioner argues that four (4) sheets of drawings were filed on 23 January, 2002. In support, a copy of petitioners' postcard receipt was provided with the present petition. The postcard bears an Office date stamp of 23 January, 2002, and the above identified application number. The postcard itemizes the filing of, *inter alia*, "[x] Drawings ____".

The petition is dismissed because the postcard does not properly itemize the filing of four (4) sheets of drawings. As the number of sheets of drawings present on filing is not itemized on the postcard, it is not possible to determine which, if any, of the

sheets of drawings filed with the present petition were present on filing. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.¹ If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract, number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application)).²

As petitioners have presented no convincing evidence that four (4) sheets of drawings were present on filing, the petition is dismissed.

Nevertheless, it has been PTO practice to treat an application that contains at least one process, method, or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).³ A review of the record reveals that Claims 17-25 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The application will be processed and examined using only the papers present on filing on 23 January, 2002. The four (4) sheets of drawings supplied on 23 July, 2002, will not be used for processing or examination, but will be retained in the file.

As the application was complete on 23 January, 2002, for filing date purposes, the present petition was necessitated by USPTO error. No petition fee is due and none has been paid.

The application is forwarded to the Office of Initial Patent Examination for further processing with a filing date of 23 January, 2002, using the application papers filed on that date. Thereafter, the application will be forwarded to Technology Center 3700 for examination in due course.

¹MPEP 503.

²Id.

³MPEP 601.01(f).

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.

A handwritten signature in black ink, appearing to read "D Wood", with a stylized, cursive script.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy